IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Petition No. 1255 of 2004 (M/S)

Kashmir Chandra,
S/o Shri Lal Chandra,
Resident of Gadarpur,
C/o Dhram Chand Arora,
326, Awas Vikas Near Gurudwara,
Rudrapur, Distt. U.S. Nagar
..... Applicant / Petitioner

Versus

1. **Civil Judge (Junior Division) Rudrapur**
   Distt. Udham Singh Nagar.

2. **Shri Diwan Chandra,**
   S/o Shri Sunder Das,
   R/o Barakhera, Tehsil - Gadarpur,
   District Udham Singh Nagar **..... Respondents**

Mr. Vikas Pande, Advocate holding brief of
Mr. V.B.S. Negi, learned counsel for the petitioner.
Mr. Nand Prasad, learned Standing Counsel for respondent No. 1.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the petitioner.

2) By means of this petition, the petitioner has challenged the orders dated 25.10.2004 and 21.08.2004 (copies Annexure Nos. 10 and 8 to the petition) passed by the learned trial court in civil suit No. 24 of 1996. The order dated 25.10.2004 appears to have been passed rejecting the application 176-C moved by the defendant (petitioner in the present petition) to consolidate the civil suit No. 24 of 1996 with civil suit No. 49 of 1989 and 74 of 1989. The provisions of Order IV-A Rule 1 of the Code of Civil Procedure, 1908 are directory in nature and the expression *'may by order direct their joint trial'* has been used. Learned trial court has rightly rejected the application 176-C for the reason

that evidence has already been recorded in one of the case and it was not necessary to further prolong said case which was near conclusion.

3) Similarly, in view of the principle of law laid down in Pukhraj D. Jain V. G. Gopala Krishna (2004) A.I.R. SCW 3356, the order dated 21.08.2004 passed by the learned trial court relating to stay of suit u/s 10 of CPC suffers from no illegality. Otherwise also, said order had already been challenged by the same petitioner through writ petition No. 865 (M/S) of 2004 decided on 16.09.2004.

4) For the reasons as above, this petition is devoid of merits and is accordingly dismissed in limine.

(Prafulla C. Pant, J.)

Dt.: 1st December, 2004
H.Negi